

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JASON ADAM RUECKERT,

Defendant-Appellant.

UNPUBLISHED

March 1, 2005

No. 250829

Leelanau Circuit Court

LC No. 02-001271-FH

Before: Talbot, P.J., and Whitbeck, C.J., and Jansen, J.

PER CURIAM.

Rueckert, a juvenile at the time the underlying offense was committed, pleaded guilty to third-degree criminal sexual conduct¹ and was sentenced as an adult² to 7½ to 15 years in prison. Rueckert appeals by delayed leave granted, challenging the trial court’s decision to sentence him as an adult. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

The underlying offense involves then-sixteen-year-old Rueckert’s anal penetration of a nine-year-old boy. The assault occurred when the boy and a friend, Chaz Johnson, were riding their bicycles in Suttons Bay on July 25, 2002. They saw Rueckert, who gave Johnson money to purchase a soft drink for him at a local store. When Johnson left, Rueckert offered the boy money to “play a game” and the two went into nearby woods. Rueckert then threw the boy to the ground, removed his pants, and placed his hands over the boy’s mouth to stop him from screaming. When questioned first by Johnson, and later by a nurse, the boy denied that Rueckert penetrated him, stating that Rueckert had only rubbed his penis along his buttocks. Rueckert, however, admitted that he penetrated the boy’s anus slightly. Rueckert gave the boy money and threatened to hurt him if he revealed the assault. An examination conducted the following day did not reveal signs of injury to the boy’s anus.

¹ MCL 750.520d(1)(b).

² MCL 769.1(3).

Although this was Rueckert's first conviction, during the presentence investigation interview Rueckert admitted that he had sexually assaulted a mentally challenged twelve-year-old girl in 1999 when Rueckert was twelve, and that same year, Rueckert placed his penis into the anus of a four-year-old boy. There was also evidence that Rueckert had sexual intercourse with a ten-year-old girl when he was seven. As the result of a guilty plea, Rueckert was adjudicated as a juvenile in Clinton County. Rueckert, who had been in custody at the Green Haven Youth Home in Michigan, was placed in a sexual offender treatment program in Wisconsin. After completing the program he was returned to Green Haven and eventually was released on probation to his maternal grandmother. He was later placed with his maternal aunt and her husband in Suttons Bay. At the time of the offense at issue, Rueckert was still on probation to Clinton County. He had registered as a sex offender. Rueckert's PSIR also contains references to numerous other transgressions Rueckert committed as a juvenile, most involving property offenses.

Rueckert's other personal history is unfortunate, to say the least. He was born suffering from fetal alcohol syndrome with significant complications. He was first placed in foster care at the age of eighteen months when his parents abandoned him. He was later returned to his parents' care, where he was repeatedly physically and emotionally abused. An older cousin also allegedly sexually assaulted him at the age of twelve. Rueckert continues to suffer the effects of fetal alcohol syndrome and has been diagnosed as mildly retarded and emotionally impaired. He suffers from attention deficit/hyperactivity disorder and other developmental disorders. He has problems with anger management and depression. His I.Q. has been measured at between 49 and 62, although his distractibility made accurate measurement difficult. He was unable to read at the time of the sentencing for the instant offense. Although no competency hearing occurred in the case at bar, the FIA's report indicates that Rueckert was evaluated competent to stand trial in 1999.

On the positive side, the FIA reported that Rueckert appeared to benefit from his last sexual offenders program, and suggested that the failure to provide follow-up treatment with Rueckert's family may have contributed to Rueckert's relapse. Rueckert's probation officer believed that Rueckert would have benefited from further treatment in the juvenile system, including behavioral modification programs and perhaps another sexual offenders program.

II. Sentencing Rueckert As An Adult

A. Standard Of Review

We review the decision whether to sentence a defendant as an adult or a juvenile for an abuse of discretion.³ We review trial court's factual findings supporting its determination for clear error.⁴

³ *People v Thenghkam*, 240 Mich App 29, 42; 610 NW2d 571 (2000), overruled in part on other grounds in *People v Petty*, 469 Mich 108; 665 NW2d 443 (2003).

⁴ *Id.* at 41.

B. MCL 769.1(3)

Rueckert argues that the trial court improperly sentenced him as an adult. To determine whether a defendant should be sentenced as an adult or a juvenile, the trial court must consider the six statutory factors in MCL 769.1(3), giving greater weight to the seriousness of the alleged offense and the juvenile's prior record of delinquency. MCL 769.1(3) provides that the trial court is to consider the following:

(a) The seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the impact on any victim.

(b) The juvenile's culpability in committing the alleged offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines.

(c) The juvenile's prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior.

(d) The juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming.

(e) The adequacy of the punishment or programming available in the juvenile justice system.

(f) The dispositional options available for the juvenile.

The offense in this case was very serious. Rueckert pleaded guilty to having forced sexual intercourse with a younger boy. The seriousness of the offense and Rueckert's culpability thus militated in favor of an adult sentence.⁵ Rueckert's prior record of delinquency includes repeated acts of criminal sexual conduct on younger children. Rueckert's prior record thus also militated against him.⁶ Rueckert had successfully completed prior juvenile sexual offender treatment program in Wisconsin. This demonstrated a willingness on his part to participate meaningfully in available programming.⁷ Unfortunately, however, Rueckert's relapse occurred after the completion of the programming.

Rueckert's main disagreement appears to be with the trial court's decision that the public would not receive a clear benefit from his involvement with further programming in the juvenile

⁵ MCL 769.1(3)(a) and (b).

⁶ MCL 769.1(3)(c).

⁷ MCL 769.1(3)(d).

system. Rueckert focuses on his good school record and the programs available in the juvenile system. However, the trial court did not fail to take this into account. The trial court instead focused on the repetitive nature of Rueckert's improper conduct, a fact that Rueckert downplays in his discussion. Also, the trial court correctly noted that Rueckert's previous treatment in the juvenile system did not prevent him from committing the instant offense. The evidence supported the trial court's conclusion that Rueckert did very well under close supervision, but then committed the instant offense when supervision was lacking.

We recognize that the Rueckert's personal history is tragic. We also acknowledge that the "ultimate goal of sentencing in this state is not to exact vengeance, but to protect society through just and certain punishment reasonably calculated to rehabilitate and thereby 'convert bad citizens into good citizens'"⁸ However, given Rueckert's past treatment history and repeated instances of misconduct, he cannot show to any degree of certainty that sentencing him as a juvenile would have been more "reasonably calculated to rehabilitate" him. Thus, we find no clear error in the trial court's conclusion that the juvenile system would not have provided more appropriate punishment and programming.⁹

Given that the statutory factors did not weigh heavily in Rueckert's favor, and considering the seriousness of the assault, we cannot conclude that the trial court abused its discretion by imposing an adult sentence.

Affirmed.

/s/ Michael J. Talbot
/s/ William C. Whitbeck
/s/ Kathleen Jansen

⁸ *People v Schultz*, 435 Mich 517, 532; 460 NW2d 505 (1990) (citations and footnote omitted).

⁹ MCL 769.1(3)(e).